

# INTERPRETING INTERPRETATION: TEXTUAL, CONTEXTUAL, AND PRAGMATIC INTERPRETATIVE METHODS FOR INTERNATIONAL TRADE LAW

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## Abstract

The conventional wisdom as to how the World Trade Organization (WTO) Appellate Body must interpret disputed terms in a treaty is incomplete, and even potentially misleading. The conventional wisdom says the Appellate Body is restricted to the tools provided by Articles 31-32 of the 1969 Vienna Convention on the Law of Treaties. The key tool is a mechanical, lexicographic hammer, namely, finding the plain meaning of a word or phrase at issue in a case between two WTO Members, with occasional recourse to surrounding passages, and if pressed, to the purpose of the treaty in which the disputed term is located. But those Articles amount to a larger tool kit than the conventional wisdom recognizes.

In truth, those Articles allow for three wide categories of techniques, Textualist, Contextualist, and Pragmatic, for interpretation. These techniques are rich, nuanced tools familiar in American Jurisprudence and English Literary Theory. A complete and transparent account of the tools the Appellate Body has at its disposal to make decisions should acknowledge this tripartite taxonomy, and thereby appreciate the intra- and inter-disciplinary nature of international trade treaty interpretation that, at least in theory, is possible.

**Keywords:** World Trade Organization, WTO, international, appellate body, Vienna Convention, Law of Treaties, Textualism, Contextualism, Pragmatism, international trade, treaty, interpretation

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